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October 21, 1999

**RECEIVED**

OCT 21 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Washington, DC 20554

Re: Qwest Communications International  
Inc. and US WEST, Inc.

Applications For Consent To Transfer  
Control of Subsidiaries Holding  
Commission Authorizations Pursuant  
To Sections 310(d), 214 Of The  
Communications Act Of 1934, As  
Amended, And Parts 5, 22, 24, 90,  
101 Of The Commission's Rules And  
Sections 34-39 Of The Cable Landing  
License Act

CC Docket No. 99-272, DA 99-1775

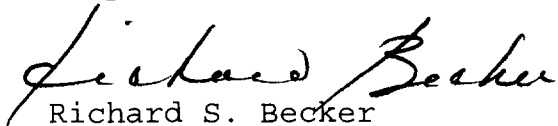
File Nos. 16-EX-TC-1999 et al.

Dear Ms. Salas:

Transmitted herewith on behalf of TSR Wireless LLC are one (1)  
original and four (4) paper copies of a "Reply To Response To  
Petition To Dismiss Or Deny Or To Defer Action" filed with respect  
to the above-referenced applications.

Should any questions arise with respect to this matter, please  
communicate directly with this office.

Respectfully submitted,

  
Richard S. Becker

Attorney for TSR Wireless LLC

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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OCT 21 1999

In re Applications of )  
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QWEST COMMUNICATIONS ) CC Docket No. 99-272  
INTERNATIONAL INC. AND ) DA 99-1775  
US WEST, INC. )  
 )  
For Consent To Transfer Control ) File Nos. 16-EX-TC-1999,  
Of Subsidiaries Holding ) 17-EX-TC-1999, 18-EX-TC-1999,  
Commission Authorizations ) 10069-CR-TC-99, 0000019080,  
Pursuant To Sections 310(d), ) 0000021246, 0000021247,  
214 Of The Communications Act ) 0000021238, 0000019073,  
Of 1934, As Amended, And Parts ) ITC-T/C-19990819-00531,  
5, 22, 24, 90, 101 Of The ) ITC-T/C-19990819-00534,  
Commission's Rules And Sections ) 0000021198, 0000021208,  
34-39 Of The Cable Landing ) 0000021291, ITC-T/C-19990819-  
License Act ) 00532, ITC-T/C-19990819-  
 ) 00535, ITC-T/C-19990819-  
 ) 00536, SCL-T/C-19990819-  
 ) 00014

To: The Commission

**REPLY TO RESPONSE TO PETITION  
TO DISMISS OR DENY OR TO DEFER ACTION**

TSR Wireless LLC ("TSR Wireless"), by its attorneys and pursuant to 47 C.F.R. §§1.45, 1.939(f), 1.2108(c), hereby replies to the "Response To Comments On Applications For Transfer Of Control" ("Response") filed with the Commission on October 18, 1999, by Qwest Communications International Inc. ("Qwest") and US WEST, Inc. ("US WEST").<sup>1</sup> The Response was filed in response to various comments and petitions filed pursuant to the Commission's Public Notice dated September 1, 1999,<sup>2</sup> against the above-referenced applications ("Applications") filed by Qwest and US

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<sup>1</sup>Qwest and US WEST will be referred to collectively herein as the "Applicants".

<sup>2</sup>Public Notice, "Qwest Communications International Inc. And US West, Inc. Seek FCC Consent For A Proposed Transfer Of Control", DA 99-1775 (released September 1, 1999) ("September 1 PN").

WEST, including the "Petition To Dismiss Or Deny Or To Defer Action" ("Petition") filed with the Commission by TSR Wireless on October 1, 1999. In reply, the following is respectfully shown:<sup>3</sup>

1. In the Petition, TSR Wireless demonstrated that grant of the Applications would be contrary to the public interest in light of US WEST's blatant disregard and continued violation of the statutory and regulatory requirements applicable to the interconnection of TSR Wireless's Commercial Mobile Radio Service ("CMRS") one-way paging systems to US WEST's landline telephone network. Specifically, US WEST has imposed on TSR Wireless various interconnection charges which are prohibited by the Communications Act of 1934, as amended (the "Act"), the Telecommunications Act of 1996, the Commission's decisions in CC Docket No. 96-98,<sup>4</sup> and the Rules and regulations of the Commission adopted therein. In addition, US WEST has adopted a uniform policy of non-provisioning of additional TSR Wireless interconnection services or facilities

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<sup>3</sup>TSR Wireless notes that although the September 1 PN did not explicitly specify a date by which petitioners could file replies to oppositions to petitions to deny, Sections 1.45, 1.939(f) and 1.2108(c) of the Commission's Rules, 47 C.F.R. §§1.45(c), 1.939(f), 1.2108(c), collectively permit petitioners to file replies within five (5) days after the time for filing oppositions has expired. Accordingly, the instant Reply is timely filed.

<sup>4</sup>"Implementation of the Local Competition Provisions in the Telecommunications Act", CC Docket Nos. 96-98, 95-185, First Report And Order, 11 FCC Rcd 15499 (1996), recon., 11 FCC Rcd 13042 (1996), second recon., 11 FCC Rcd 19738 (1996), third recon., FCC 97-295 (released August 18, 1997), aff'd for CMRS, Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), rev'd on other grounds, AT&T Corporation v. Iowa Utilities Board, 119 S. Ct. 721 (1999); "Implementation of the Local Competition Provisions of the Telecommunications Act of 1996", CC Docket Nos. 96-98, 95-185, 92-237, Second Report And Order And Memorandum Opinion And Order, 11 FCC Rcd 19392 (1996).

in an attempt to force TSR Wireless to pay these prohibited charges. Finally, by continuing to impose impermissible interconnection charges, US WEST has attempted to force TSR Wireless into negotiations for the purposes of addressing these interconnection issues that have already been conclusively prohibited by the Commission. Accordingly, it is the position of TSR Wireless that these illegal and anti-competitive practices require that the Commission dismiss or deny the Applications or, in the alternative, that the Commission defer or condition its approval of the Applications until such time as US WEST and Qwest demonstrate that the surviving company will fully comply with applicable statutory and regulatory interconnection requirements.

2. Instead of taking this opportunity to address the critical public policy issues implicated by this merger, the Applicants have chosen to simply evade the substantive matters presented in TSR Wireless's Petition. Contrary to the Applicants' assertion, the matters raised by TSR Wireless directly implicate the basic qualifications of US WEST. US WEST is required to comply with the Commission's Rules governing the services in which it operates and its repeated violation of such Rules is compelling evidence regarding the character of US WEST and is properly considered in this transfer of control context.<sup>5</sup> In addition, the Commission must not accept US WEST's inaccurate spin on TSR Wireless's allegations, namely that TSR Wireless has somehow presented to the Commission a "novel claim" for "unlimited free

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<sup>5</sup>See Petition, p.7-8.

interconnection".<sup>6</sup> As TSR Wireless has demonstrated, the Commission has repeatedly reiterated that the explicit language of 47 C.F.R. §51.703(b) prohibits imposition by LECs like US WEST against CMRS paging carriers like TSR Wireless of any charges for local telecommunications traffic that originates on the LEC's network -- whether those charges are for traffic, facilities, or otherwise.<sup>7</sup> Similarly, the above-described Commission regulations governing interconnection of CMRS systems have been expressly upheld by the United States Court of Appeals for the Eighth Circuit as valid interpretations by the FCC not only of Section 251(b)(5) of the Communications Act of 1934, as amended, but also as valid interpretations of the various additional statutory provisions that provide the FCC with broad jurisdiction over CMRS.<sup>8</sup> The Applicants did not address in the Response any of the allegations relating to US WEST's violations of the unambiguous and judicially-affirmed regulations applicable to CMRS/Local Exchange Carrier ("LEC") interconnection. Rather, they nonchalantly and erroneously shrugged off such requirements as described above. In light of US WEST's wholesale failure to address the substantive issues raised by TSR Wireless with respect to this issue, the Commission should accept TSR Wireless's allegations as true and grant the relief requested by TSR Wireless in its Petition.

3. In addition, the Commission must not accept the

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<sup>6</sup>See Applications, p.27, note 58.

<sup>7</sup>See Petition at 10-11.

<sup>8</sup>Id. at 11.

inaccurate, diversionary arguments offered by the Applicants in the Response in lieu of a reasoned discussion of the substantive public interest issues raised by TSR Wireless. In this regard, TSR Wireless respectfully submits that the instant proceeding is an entirely proper forum in which to hold US WEST accountable for its actions and that TSR Wireless's participation in this proceeding is consistent with Commission policy. Specifically, contrary to the Applicants' claim, TSR Wireless has demonstrated that US WEST's continued violations of CMRS/LEC interconnection requirements, and its improper non-provisioning of additional TSR Wireless services and facilities, has caused, and will continue to cause injury to TSR Wireless in a manner sufficient to establish TSR Wireless's standing as a petitioner in this proceeding.<sup>9</sup> Further, TSR Wireless has demonstrated that, because the proposed merger seeks to expand US WEST's local exchange services "at the national level given the preexisting base of Qwest business outside the US WEST region ...."<sup>10</sup>, grant of the Applications would serve only to reward US WEST for its disregard of Commission requirements and to encourage continued violations by the surviving company, thereby exacerbating the injury suffered by TSR Wireless to date.

4. Finally, TSR Wireless respectfully submits that the Commission must not permit the Applicants to use the pendency of the formal complaint proceeding against US WEST concerning these CMRS/LEC interconnection issues as an excuse for dodging the issues

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<sup>9</sup>See Petition at 3-6.

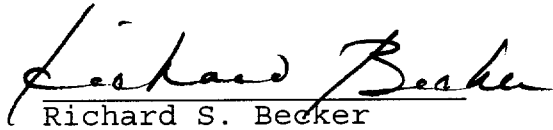
<sup>10</sup>Applications at 18.

presented in the Petition. In this regard, TSR Wireless's status as a complainant in File No. E-98-13 does not prohibit it from filing a petition to deny pursuant to Section 1.939, which provides that "any party in interest may file with the Commission a petition to deny ...." 47 C.F.R. §1.939 (emphasis added). TSR Wireless has not only demonstrated its interest in the proposal set forth by the Applicants, but it has presented to the Commission compelling, un rebutted evidence regarding US WEST's violations of Commission requirements. The Applicants' conspicuous refusal to address this evidence must not be viewed lightly by the Commission. Rather, it should constitute an independent basis for the denial of the Applications filed by Qwest and US WEST.

**WHEREFORE,** for all of the foregoing reasons, TSR Wireless reiterates its request that the Commission dismiss or deny the above-captioned Applications.

Respectfully submitted,

**TSR WIRELESS LLC**

By:   
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Date: October 21, 1999

**CERTIFICATE OF SERVICE**

I, Susan Mitchual, a secretary in the law firm of Richard S. Becker & Associates, Chartered, hereby certify that I have on this 21st day of October, 1999, sent by First Class United States mail, postage prepaid, copies of the foregoing **"REPLY TO RESPONSE TO PETITION TO DISMISS OR DENY OR DEFER ACTION"** to the following:

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